

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO.1322 OF 2012

The Commissioner of Income-Tax-2

...Appellant

v/s.

M/s.Tata Petrodyne Ltd.

...Respondent

Mr.Sureshkumar for the Appellant.

Mr.Dinesh Vyas, Sr.Advocate with Mr.Mandar Vaidya i/b Srihari Iyer  
for the Respondent.

**CORAM : S.C.DHARMADHIKARI &  
A.A. SAYED, JJ.**

**DATED : 20 NOVEMBER 2014**

**P.C.**

This Appeal of the Revenue challenges the order passed by the Income Tax Appellate Tribunal, Mumbai Bench on 11 April 2012 in the Appeal of the Revenue, being ITA No.5117/Mum/2007 and in two Appeals of the Assessee, ITA No5306/Mum and 4804/Mum of 2007.

2. The two Assessment Years in question were 2002-03 and 2004-05.

3. The cross Appeals were because the Assessee was aggrieved by the Commissioner's exercise of upholding the order of the Assessing Officer and that was in relation to the exploration

activities carried out by the Assessee. The Assessee claimed a deduction under section 80IB(9) of the Income Tax Act, 1961. The argument of the Revenue was that the Assessee was neither engaged in commercial production nor any refining of mineral oil. The extraction of the said oil, therefore, does not result in any new product or new commodity coming into existence and the product sold and one extracted is identical.

4. The Tribunal in rejecting the ground of the Revenue upheld the order of the Commissioner. It held that the activity of the Assessee is identical to the one undertaken by other Assessee namely Hindustan Oil Exploration Co. Ltd. There was a consortium of such Corporations, of which the present Assessee was a part. In the case of **Hindustan Oil Exploration Co.Ltd. v/s.CIT** in ITA No.179/Mum/2007, on 28 December 2012 the Tribunal considered an identical issue. It held that the activity of extraction could very well fall within the term "production". That is the word used in section 80IB(9)(ii). The Tribunal in the case of Hindustan Oil relied on the judgment of the Hon'ble Supreme Court reported in **(2004) 271 ITR 331, Commissioner of Income-tax v/s. Sesa Goa Ltd.** The Hon'ble Supreme Court held that from the definition of the word

`production', it has to follow that mining activity for the purpose of mineral oil would come into within the ambit of the word `production', since ore is "a thing", which is the result of human activity or effort. The Hon'ble Supreme Court held that extraction and processing of iron ore amounts to "production" within the meaning of the word in section 32-A(2)(b)(iii) and consequently the Assessee was entitled to benefit of section 32-A(I). The Hon'ble Supreme Court's judgment in this case was followed and applied by the Tribunal in the matter of M/s.Hindustan Oil Exploration Co.Ltd., a consortium partner of the Assessee. Finding that the activity of the present Assessee is identical to that of Hindustan Exploration, the Tribunal applied the ratio in its own order and that of the Hon'ble Supreme Court and upheld the order of the Commissioner of Income-Tax(Appeals) to that extent. We do not see how a different view can be taken and on the same facts and circumstances. If the consortium partner was undertaking an identical activity, and was allowed the deduction, the Tribunal then neither acted perversely nor did it commit any error of law apparent on the face of the record in following and applying its own order to the Assessee before us.

5. We are surprised that the view which is imminently possible and cannot be termed as unreasonable or perverse is being questioned before us by the Revenue. It is unfortunate that the Revenue officials, often very senior, unmindful of the damage that they cause to larger public interest by indulging in fruitless litigations, file frivolous Appeals to this Court and burden this Court unnecessarily. All this is done at the cost of the public exchequer. We have not been able to stop this trend and despite very harsh criticism and order imposing heavy costs. We do not know the reason as to why such course is adopted by the Revenue and repeatedly. It is time that the Highest Officials in the Department enlighten us and make us aware as to how this exercise is carried out and for year to year by the Revenue. It is only to bring to the notice of the Department and hoping that a change in the regime will bring a modification or change in the outlook and mindset, that we direct that a copy of this order be forwarded by the Registrar, High Court, Original Side to the Secretary in the Department of Revenue, Government of India, Ministry of Finance.

6. We also find that the second question and termed as a substantial question of law by the Revenue is not such. The site restoration expenses or abandonment cost was treated as an

ascertained liability. The same was deleted from the computation of book profit under section 115JB.

7. In regard to this claim or deduction as well, the Tribunal in para 25 of the impugned order referred to the explanation of the Assessee before the Assessing Officer that as per the terms and conditions of a Production sharing contract, it is under obligation that on expiry or termination of the contract to remove all its equipments and installations from the contract area as well as perform the necessary site restoration, operation or process. This is in accordance with the International Petroleum Practices. Such explanation of the Assessee was supported by independent finding and carried out by Institute of Oil and Gas Production Technology. It is in these circumstances, and holding that explanation of this institute is in accordance with the view and guidelines issued by the Chartered Accountants of India that the Tribunal upheld the order of the Commissioner even on this issue.

8. Therefore, it is only to highlight as to how the Revenue questions and repeatedly, such possible conclusion that we referred to these facts and circumstances regarding this Assessee in detail. This is one more claim or question and which is raised before us.

Even this cannot be said to be a substantial question of law as the Tribunal's view and that of the Commissioner relying on the above material can hardly be termed as perverse.

9. As result of the above discussion, and finding that the only two questions are not substantial questions of law, that we proceed to dismiss this Appeal. Ordinarily we would have been justified in imposing heavy costs, but finding that this is a fit case to bring to the notice of the higher officials in the Department, the act of the Revenue officials, particularly in the Bombay area, and hoping that there would change hereafter that we do not impose costs. We clarify, however, that if no substantial change is noticed by us hereafter, such order would follow imposition of heavy costs and which would be visited with remarks and comments on the conduct of the individual official. Such costs can also be then visited on and recovered from these officials. We hope that this much is enough for the purpose of seeking some enlightenment from the higher officials.

**(A.A. SAYED, J.)**

**(S.C.DHARMADHIKARI, J.)**